HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

No. WP. 1230 Year 2003 (S/S)

Mangal Singh Versus State of Uttaranchal

Approved for reporting.

_____

~~Not approved for reporting~~

Date of decision 15.10.2003

Initial of Judge

In the High Court of Uttaranchal at Nainital

Court No.6

Writ Petition No. 1230 of 2003 (S/S)

Mangal Singh,
S/o Shri Chait Singh Mandrawal,
R/o Village Naithana, Patti Chauras,
District Tehri Garhwal ……Petitioner

Vs.

1. State of Uttaranchal
2. Public Service Commission,
   Uttaranchal, Ayog Bhawan, Gurukul Kangri
   Kankhal, Dist, Haridwar ……..Respondents

Counsel for the Petitioner :- Sri R. Dobhal
Counsel for the Respondent :- Sri U.K. Uniyal
Date of judgment :- 15.10.2003

Hon'ble Rajesh Tandon, J.

By the present Writ Petition, the petitioner has prayed for issue of a writ, order or direction in the nature of Certiorari calling for the record and quashing clause no. 8 of advertisement dated 5.10.2003 (Annexure No. 3 to this writ petition) issued by the respondent no. 2 namely Public Service Commission, Uttranchal to the extent that it provides 2nd July as cut off date. Further prayer has been made with regard to the mandamus commanding the respondents to consider the candidature of petitioner for appointment for the post of Lecturer (Economics) in Government Inter Colleges of State of Uttaranchal.

Brief facts giving rise to the present Writ Petition are that the petitioner has passed M.A.(Eco.), B.Ed. And Ph.D. and according to the

qualifications of the petitioner he is eligible for the post of Lecturer (Economics) in Government Inter Colleges of State of Uttaranchal.

On 5.10.2003 the respondent no. 2 Public Service Commission, Haridwar has issued an advertisement in Hindi Dainik namely Amar Ujala inviting the applications for considering the appointment of Lecturer (Economics) in Government Inter Colleges of State of Uttaranchal.

According to the said advertisement, the age limit for the post of Lecturer(Economics) in Government Inter Colleges of State of Uttaranchal has been quoted to be minimum age of 21 years and maximum 35 years. Clause no. 8 of the advertisement provides as under:

> ''आयु सीमा (1) आयु गणना की निष्चायक तिथि 01 जुलाई 2003 है। अभ्यर्थियों को 01 जुलाई, 2003 को 21 वर्ष की आयु अवष्य पूरी करनी चाहिए और उन्हें 35 वर्ष से अधिक आयु का नही होना चाहिए अर्थात उनका जन्म 01 जुलाई 1982 के बाद का तथा 02 जुलाई 1968 के पूर्व का नही होना चाहिए (2) अधिकतम आयु सीमा में छूट उत्तरांचल के अनुसूचित जाति / उत्तरांचल के अनुसूचित जन जाति / उत्तरांचल के अन्य पिछडे वर्ग के अभ्यार्थियो तथा उत्तरांचल के स्वतन्त्रता संग्राम सेनानियो के आश्रितो के लिए अधिकतम आयु सीमा में 5 वर्ष अधिक की छूट अनुमन्य होगी (यह छूट केवल उत्तरांचल के मूल निवासी अभ्यर्थियों को ही अनुमन्य होगी (ख) (1) समाज के विकलाग अभ्यार्थियो के लिए समूह 'ख' के पदों तथा अधीनस्थ राजपत्रित पदो ंके लिए अधिकतम आयु सीमा 5 वर्ष अधिक होगी।''

Hard Sri Rajendra Dobhal, learned counsel for the petitioner and Sri U.K. Uniyal, learned counsel for the respondent no. 2.

The grievance of the petitioner is that clause no. 8 on the face of it is arbitrary in as much as according to the conditions mentioned in the advertisement, age limit has been shown to be minimum 21 years and maximum 35 years.

According to the learned counsel for the petitioner, the intention of the Commission is to incorporate the minimum and maximum age limit on 1st July. The minimum age has been fixed as 21 years and the maximum limit has been fixed as 35 years.

The argument of the counsel for the petitioner is that on 1st July, 2003, according to the advertisement itself he has completed 35 years and therefore he has to be considered for the Lecturer in accordance with the advertisement. According to the petitioner, his date of birth is 1.7.1968 and, therefore, 35 years will complete on the same date.

The learned counsel for the petitioner has also referred Rule 6 of the Uttar Pradesh Recruitment Service (Age Limit) Rules 1972, which is quoted as under:

> ***"1. Short title and commencement-*** *(1) These rules maybe called the Uttar Pradesh Recruitment to Service (Age Limit) Fifth Amendment) Rules, 1984.*
>
> *(2) They shall come into force at once.*
>
> ***2. Insertion of new Rule 6****.- After Rule 5 of the Uttar Pradesh Recruitment to Services (Age Limit) Rules, 1972, the following shall be inserted namely:*
>
> ***"Computation of age-*** *Notwithstanding anything to the contrary contained in any service Rule, for the services and posts, whether within or outside the purview of the Public Service Commission, a candidate must have attained the minimum age and must not have attained the maximum age, as prescribed from time to time, on the first day of July of the calendar year, in which vacancies for direct recruitment are advertised by the Public Service Commission or any other recruiting authority, or as the case may be, such vacancies are intimated to the Employment Exchange:*

Provided that nothing in this rule shall apply to a case, where such advertisement or intimation has been made before the commencement of the Uttar Pradesh Recruitment to Service (Age Limit) (Fifth Amendment) Rules, 1984"

I have heard Sri Uniyal on this question on behalf of the respondent no. 2. He has stated that the advertisement with regard to 1st July, 1982 as mentioned in clause 8 is perfectly correct but so far as 2nd July, 1968 is concerned the same has to be interpreted in relation to 1st July of the calendar year.

Sri Uniyal has fairly stated that there is no occasion not to consider the application of the petitioner according to the Recruitment Rules, the age has to be calculated on the calendar year of 1st July. He has stated that the same will be considered in accordance with the aforesaid Rule.

The petitioner apprehends that his application will not be entertained because of clause 8. I find no reason for not considering the petitioner. According to the interpretation of Rule 6 of the Uttar Pradesh Recruitment of Service (Age Limit) Rules, 1972, the minimum and maximum age limit has to be computed on the date of 1st July of the calendar year.

In the aforesaid facts and circumstances, the respondents are directed to consider the application of the petitioner and pass appropriate orders on his application in accordance with the Rules contained under the Uttar Pradesh Recruitment of Service (Age Limit) Rules, 1972.

Suffice to state that considerations or non-consideration of his application will be subject to the application **of mind** in accordance with the Recruitment Rules and shall follow the reasons as it involves civil consequences as held in D.K. Yadav Vs. J.M.A. Industries Ltd, (1993) 3 Supreme Court Cases page 259. The observations of the Apex Court are quoted below:

"They have a duty to proceed in a way which is free from even appearance of arbitrariness, unreasonableness or unfairness. They have to at in manner which is patently impartial and meets the requirements of natural justice."

In the light of the facts stated aforesaid the petitioner is entitled to be considered for the appointment of Lecturer,(Economics) in Government Inter Colleges of State of Uttaranchal in accordance with the U.P. Recruitment Service (Age Limit) Rules, 1972 as it is also very fairly conceded by Sri U.K. Uniyal, learned counsel for the respondent no.2.

With these observations the Writ Petition is allowed. There will be no order as to the costs.

(Rajesh Tandon J.)

Dated: 15.10.2003
Rawat